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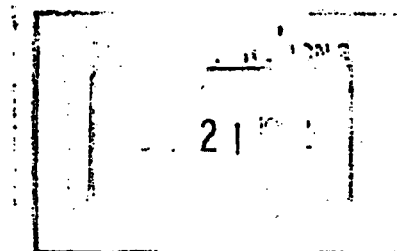
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CERTIFIED MAIL

September 17, 1992

Mr. John F. Cryan
Deputy Regional Permit Administrator
New York State Department of
Environmental Conservation
47-40 21st Street
Long Island City, NY 11101



Re: B.C.F. Oil Refining, Inc.
DEC Permit No. 2-6101-00075/00001-0
SPDES Discharge Permit No. NY-0036609

Dear Mr. Cryan:

Please be advised that this firm represents B.C.F. Oil Refining, Inc. ("B.C.F.").

B.C.F. acknowledges receipt of DEC Permit No. 2-6101-00075/00001-0 (including Solid Waste Program No. 24001 and SPDES No. NY-0036609) transmitted with your letter of August 21, 1992. After review of the aforesaid permits, including the Special Conditions incorporated in them, B.C.F. finds it necessary to request an adjudicatory hearing pursuant to Title 6 NYCRR § 621.9(a)(2).

The Special Conditions to which this request relates, and the grounds on which it is based, are set forth in the balance of this letter.

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Solid Waste

Special Condition No. 4

Special Condition No. 4 contains a time table for the testing to be performed by B.C.F. on its storage tanks. That schedule sets forth various deadlines phrased in terms of the end of each calendar year (e.g., for the year ending 12/31/92, the year ending 12/31/93, etc.).

B.C.F. hereby requests that the tank testing schedule be modified to begin with the 12 months ending August 31, 1993, and to continue in 12-month periods ending on August 31 of each succeeding year. For example, if this modification is granted, the tank numbers now listed in Special Condition No. 4 for the year ending December 31, 1992 would instead be listed for the year ending August 31, 1993. Similarly, the tank numbers listed for each succeeding December 31 year end would be amended so that the applicable deadline is August 31 of the following year.

The basis for this requested modification in Special Condition No. 4 is that since the negotiations between B.C.F. and the DEC which led to the April 18, 1991 Order on Consent from which the tank testing schedule originally arose, B.C.F. has suffered a serious erosion of its earnings and its general financial condition. As a result, B.C.F. is not able to bear the cost of cleaning (and disposing of waste material from) 10 tanks between now and the end of this year, as Special Condition No. 4 currently

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requires. By allowing the modification requested in this letter, B.C.F. would be able to go through the entire 1992-1993 heating season -- the time of year when its cash flow is at a maximum -- and would have the opportunity to accumulate the capital necessary to pay the cost of having this work done. Similarly, in each succeeding year, B.C.F.'s deadline for completing the applicable tank cleaning and waste disposal would not expire until after the conclusion of the heating season, the cash flow from which would support this work.

B.C.F. also requests modification of Special Condition No. 4 in one other respect. In the paragraph on page 4 of the Permit immediately following the tank testing schedule, the following phrase appears on lines 3 and 4: ". . . permittee must immediately locate the sources of the petroleum contamination." The word "immediately" was not included in the draft Special Conditions which B.C.F. received from the DEC in June, 1992, and B.C.F. hereby requests the deletion of that word from Special Condition No. 4 of the Permit.

The reason for this request is that the use of this term requires the conduct of B.C.F. to comply with a standard which is impossible to attain. This is particularly so in view of the fact that the sentence under consideration applies to leaks indicated by "inspections, the leak detection systems, or the groundwater wells". It is the last reference -- to the groundwater wells -- that raises the real problem here, since those wells cannot

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possibly be under continuous 24-hour inspection. Therefore, if a groundwater well indicates a leak, the probability is that the leak occurred years before its discovery. As such, the risk exists that B.C.F. will be deemed not to have acted "immediately" after the well "indicate[s] that the tanks are leaking".

To avoid this problem, B.C.F. suggests that the reference in this sentence to groundwater wells be deleted, that the words "upon learning of such condition," be inserted after the word "immediately", or that the word "immediately" be deleted.

Special Condition No. 5

Paragraph 5 of Schedule A of the Order on Consent requires monthly reports, but Special Condition No. 5 calls for such reports to be filed with the DEC on a quarterly basis. B.C.F. simply requests clarification that the language of the Special Conditions in the Permit itself supersedes the language in the Order on Consent.

Special Condition No. 11

The 30-day deadline provided for the removal of sludge is not adequate. The reason is that given the nature of B.C.F.'s operation, the amount of sludge removed from the tanks in any 30-day period would not be sufficient to fill up a dumpster. Consequently, the imposition of a 30-day deadline would require

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B.C.F. to bear the additional cost of removing and replacing dumpsters which are only partially full.

B.C.F. requests that Special Condition No. 11 be modified to change the deadline to 90 days. We respectfully submit that such an amendment would not pose any health risk, since 90 days is the time provided to remove hazardous waste under the federal guidelines applicable to generators of hazardous waste. In addition, 90 days is the deadline set forth in Title 6 NYCRR § 360-1.14(f)(3).

Special Condition No. 15

B.C.F. hereby requests that this Condition be deleted from the Permit. This requirement of an "energy balance" is applicable to solid waste incinerators, but it is not included in Title 6 NYCRR § 360-12 or § 360-14, the regulations applicable to recyclables handling and recovery facilities and waste oil facilities.

Special Condition No. 18

B.C.F. requests the deletion of this Special Condition in its entirety. It was never raised in any of the discussions which led to the Order on Consent and was not included in the draft Special Conditions which the DEC sent to B.C.F. for review. Moreover, we are aware of no authority for the imposition of such a condition.

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B.C.F. respectfully submits that Special Condition No. 18 in fact amounts to an increase in the Monetary Penalties which were imposed upon it by the Order on Consent, and which it has already paid. Moreover, the open-ended nature of Special Condition No. 18 exposes B.C.F. to a monetary penalty with virtually no limit -- exactly the kind of thing which litigants avoid by entering into settlements. I can assure you that had Special Condition No. 18 been something which the DEC requested at the time the Order on Consent was being negotiated, B.C.F. would never have agreed to this provision.

SPDES

With respect to the SPDES Permit, B.C.F.'s only requested modification relates to Action Code 19 on page 7. The last line of the first paragraph of Action Code 19 refers to "a Method Detection Limit of 0.065 ug/l." B.C.F. is informed by its engineer that existing testing procedures do not allow a Method Detection Limit of 0.065 micrograms per liter (i.e., 65 parts per trillion). Therefore, it is B.C.F.'s belief that this figure should be "0.65 ug/l", which B.C.F.'s consulting engineer says existing testing methods can attain.

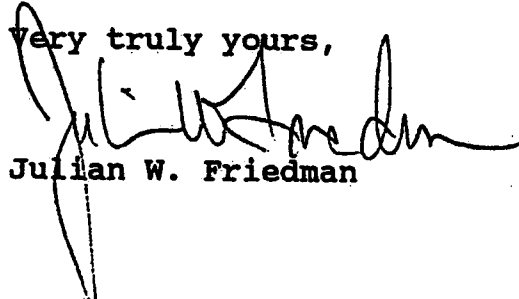
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Should you have any questions regarding the information presented above, or wish to discuss in further detail this request

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for an adjudicatory hearing, please feel free to contact the undersigned at the address above. Otherwise, we look forward to the scheduling of a hearing within the 45 days provided in Title 6 NYCRR § 621.9(a)(2).

Very truly yours,


Julian W. Friedman

JWF:cn

cc: Mr. Thomas C. Jorling
Paul A. Gallay, Esq.